

DOCKET NO. DBD-CV21-6041124-S : SUPERIOR COURT

PAUL VAN VALKENBURGH and : J.D. OF DANBURY
DOREEN VAN VALKENBURGH

V. : AT DANBURY

WASHINGTON COBOS and : NOVEMBER 10, 2021
ADRIANA COBOS

MOTION TO STRIKE

Pursuant to *Connecticut Practice Book* §10-39, et. seq., the undersigned Defendants, Washington Cobos and Adriana Cobos, hereby respectfully move to strike that portion of the prayer for relief that seeks double or treble damages. The Plaintiff does not specifically that remedy is based on C.G.S. 52-560 and the statute requires same. A memorandum of law in support thereof is attached hereto.

THE DEFENDANTS,
WASHINGTON COBOS AND
ADRIANA COBOS

By /s/435257

Michael Goguen

**Law Offices of Meehan, Roberts, Turret &
Rosenbaum**

Tel. # 203-294-7800

Juris # 408308

CERTIFICATION

This is to certify that all personal identifying information was redacted pursuant to *Practice Book Section 4-7*. This will further certify the foregoing was mailed via U.S. Mail, postage pre-paid or electronically delivered pursuant to *Practice Book Section 10-14* on this 10th day of November, 2021.

Attorney for Plaintiff

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_____/s/435257
Michael Goguen
Commissioner of the Superior Court

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MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS'
MOTION TO STRIKE

I. FACTS:

The Plaintiffs, Paul Van Valkenburgh and Doreen Van Valkenburgh, have filed a four-count Complaint dated October 1, 2021, seeking damages resulting from the Defendant Washington Cobos allegedly cutting down a maple tree located on the Plaintiffs' property at 7 Whitney Road in Bethel, Connecticut. In Count One, Plaintiff alleges violation of C.G.S. section 52-560 as to Washington Cobos. In Count Two, Plaintiff alleges violation of C.G.S. section 52-560 as to Adriana Cobos. In Count Three, the Plaintiff alleges negligence as to Washington Cobos. In Count Four, the Plaintiff alleges negligence as to Adriana Cobos.

II. STANDARD OF REVIEW:

The purpose of a Motion to Strike is to test the legal sufficiency of the allegation set forth in the challenged pleading. *Ferryman v. Groton*, 212 Conn. 138, 142 (1989). A motion to strike may also

be used to contest the legal sufficiency of any prayer for relief. *Kavarco v. T.J.E., Inc.*, 2 Conn. App. 294, 298 n.4 (1984). In ruling upon a motion, the Court must construe the facts “in a manner most favorable to the pleader.” *Amodio v. Cunningham*, 182 Conn. 80, 82 (1980). “[A]ll well pleaded facts and those facts necessarily implied from the allegations are taken as admitted.” *Id.* at 83. The Court, when ruling on a Motion to Strike, may not be aided by assumptions of fact not therein alleged. *Liljedahl Bros., Inc. v. Grisby*, 215 Conn. 345, 348 (1990). “A Motion to Strike is properly granted if the complaint alleges mere conclusions of law that are unsupported by the facts alleged.” *Novamatrix Medical Systems, Inc. v. BOC Group, Inc.*, 224 Conn. 210, 215 (1992).

III. ARGUMENT/DISCUSSION

The undersigned Defendants respectfully move to strike the portion of Plaintiff’s prayer for relief that seeks double or treble damages, as Plaintiff does not specifically state that remedy is based on C.G.S. §52-560, and statute requires the same.

In Paragraph Three of Plaintiffs’ Prayer for Relief, Plaintiffs claim double or treble damages. In order to recover treble damages under C.G.S. section 52-560, “the complaint must clearly state that the claim for relief is based upon the statutory remedy.” C.G.S. section 52-560. The Plaintiffs have failed to specifically plead facts that connect the alleged behaviors of the Defendants to a violation of the statute, and do not specifically claim a remedy under the statute. Therefore, Plaintiffs have not sufficiently plead a basis that warrants a claim for double or treble damages in the Prayer for Relief.

WHEREFORE, based on the reasons set forth herein, the undersigned Defendants respectfully request that the Plaintiffs' claim for double or treble damages be stricken from the Prayer for Relief.

THE DEFENDANTS,
WASHINGTON COBOS AND
ADRIANA COBOS

By /s/435257
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